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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/965,675	09/27/2001	Mark E. Dristy	PES-0048	2890
23462	7590	06/21/2004	EXAMINER	
CANTOR COLBURN, LLP 55 GRIFFIN ROAD SOUTH BLOOMFIELD, CT 06002			RUTHKOSKY, MARK	
			ART UNIT	PAPER NUMBER

1745

DATE MAILED: 06/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/965,675

Applicant(s)

DRISTY ET AL.

Examiner

Mark Ruthkosky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 13-42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-12 is/are rejected.
- 7) ☒ Claim(s) 3 and 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date as noted in action.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

The information disclosure statements filed 5/11/2002, 9/16/2002, 10/7/2002, 10/17/2002, 10/26/2002, 7/14/2003, and 2/19/2004 have been placed in the application file, and the information referred to therein has been considered, as marked, to the merits.

### ***Election/Restrictions***

Applicant's election of Group I, claims 1-12 in the reply filed on 4/2004 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless —

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 5-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Shiepe et al. (WO 00/39362.)

The instant claims are to an electrochemical cell comprising a first electrode, a second electrode, a membrane disposed between the first and second electrodes and a pressure pad disposed in electrical communication with the first electrode and being configured to support the first electrode, second electrode and the membrane. The pressure pad includes an electrically conductive member and a compression member disposed at the electrically conductive member.

Shiepe et al. (WO 00/39362) teaches an electrochemical cell comprising a first electrode, a second electrode, a membrane disposed between the first and second electrodes and a pressure pad disposed in electrical communication with the first electrode and being configured to support the first electrode, second electrode and the membrane. The pressure pad includes an electrically conductive member and a compression member disposed at the electrically conductive member. The porous pad is compressible. The same materials are noted in each invention. Thus, the claims are anticipated.

Claims 1, 2 and 5-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Leonida et al. (US 5,324,565.)

Leonida et al. (US 5,324,565) teaches an electrochemical cell comprising a first electrode, a second electrode, a membrane disposed between the first and second electrodes and

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a pressure pad. The pressure pad disposed in electrical communication with the electrodes and is configured to support the first electrode, second electrode and the membrane. The pressure pad includes an electrically conductive member and a compression member disposed at the electrically conductive member see claims 1-14, the figures; col. 3, lines 5-65; col. 4, line 5-end; col. 6, lines 40-end; col. 7, lines 1-60.) The porous pad is compressible. A second layer of copper, nickel or an alloy thereof is disposed adjacent to the material forming a pad. The same materials are noted in each invention. Thus, the claims are anticipated.

***Allowable Subject Matter***

Claims 3-4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is an examiner's statement of reasons for allowance:

The instant claims are to an electrochemical cell comprising a first electrode, a second electrode, a membrane disposed between the first and second electrodes and a pressure pad disposed in electrical communication with the first electrode and being configured to support the first electrode, second electrode and the membrane. The pressure pad includes an electrically conductive member and a compression member disposed at the electrically conductive member. In claim 3, the electrically conductive member and the compression member are spirally arranged in the pressure pad. In claim 4, the electrically conductive member comprises a plate; the plate includes a plurality of raised portions concentrically disposed thereon and receive compression members there between. The prior art does not teach an electrochemical cell, as

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claimed, with either the electrically conductive member and the compression member spirally arranged, or the electrically conductive member comprises a plate, the plate includes a plurality of raised portions concentrically disposed thereon and receive compression members there between. As the prior art does not teach a compression pad with these configurations, the claims are allowable over the prior art.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

#### ***Examiner Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Ruthkosky whose telephone number is 571-272-1291. The examiner can normally be reached on FLEX schedule (generally, Monday-Thursday from 9:00-6:30.) If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Ryan can be reached at 571-272-1292. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free.)

Mark Ruthkosky

Primary Patent Examiner

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*Mark Ruthkosky* 6/14/04